IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

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(1) Kailash Dan Charan Vs. State of Raj. & Ors.
(S.B. Civil Writ Petition No.863/2002)

(2) Hari Prasad vs. State of Raj. & Ors.
(S.B. Civil Writ Petition No.1430/2003)

WRIT PETITIONS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purhit, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.
Ms.Kusum Rao]
Mr.P.S. Bhati] Advocates for the respondents.

BY THE COURT

Since both the aforesaid writ petitions pertain to the common dispute with regard to the appointment on the post of Para Teacher with Gram Panchayat Joiendra at Panchayat

Samiti Osian, district Jodhpur, they were heard together and are being passed by this common judgment.

The petitioner Kailash Dan in his writ petition prayed for a direction to the respondents to appoint him on the post of Para Teacher. According to him, the respondents invited applications for appointment on the post of Para Teacher in various Rajeev Gandhi Swarn Jayanti Pathsalas for as many as twelve posts in ten Gram Panchayats including Gram Panchayat Joientra by issuing an advertisement in the year 2002. The petitioner belongs to O.B.C. category. The Sarpanch of Gram Panchayat Joientra belongs to general category. A meeting of Gram Sabha was convened on 26th January, 2002 in which the petitioner appeared and was interviewed by the selection committee. In fact the petitioner was the only candidate who has appeared before the selection committee and therefore he was selected. However, the respondents have now informed that since the post was reserved for general community, a candidate from O.B.C. could not be appointed. Hence the writ petition.

The petitioner Hari Prasad in the second writ petition has also asserted that he too appeared before the selection committee for interview in the meeting of the Gram Sabha held on 26th January, 2002. He has the qualification of M.Com. and B.Ed. He had submitted his application for appointment on the post of Shiksha Sahayogi at Gram Panchayat, Joientra and his application was entered at inward No.2208 of the Panchayat Samiti. In fact he had applied in his application in priority for four places namely Joientra, Khedapa, Birai and Kalawa. The Sarpanch of the Gram Panchayat informed the petitioner on 26th February, 2002 that his application has not been received. He therefore submitted a representation to Vikas Adhikawi, Panchayat Samiti, Osian who wrote a letter to the Secretary, Gram Panchayat directing them to consider the candidature of the petitioner. Vikas Adhikari sent four applications with his letter. It was thereafter that the meeting of the Gram Panchayat was again convened on 20nd February, 2002 whereby the resolution dated 26th January, 2002 was cancelled and a fresh resolution was passed wherein name of the petitioner was shown at serial No.1. However, the respondents

have not so far given appointment to him and therefore they should be directed to consider his candidature for appointment as Shiksha Sahayogi.

The respondents have contested the writ petitions and filed their reply in both the writ petitions. The respondents in their reply have admitted the fact that Hari Prashad in his application for appointment had given the preference for as many as four places wherein he had given Joientra as his first choice. According to them Joientra was reserved for general category and therefore a candidate belonging to O.B.C. category could not be appointed. In the fresh selection, petitioner Hari Prasad was selected but because of the pendency of the writ petition No.863/2002 filed at the instance of Kailash Dan, he could not be appointed so far.

I have heard learned counsel for the parties and perused the record.

The basic fact which has not been filed by any of the

parties is that the notification which was issued by the respondents was a notification inviting application for appointment on twelve posts of Shiksha Sahayogis in as many as ten Gram Panchayats and eleven posts of Mahila Shiksha Sahayogis again for ten Gram Panchayat. But this notification did not indicate that application for all these posts was to be submitted separately or it could be submitted jointly. The application which the petitioner submitted has been placed on record. A perusal of this application show that petitioner had given priority for appointment for as many as four places namely Joientra, Khedapa, Birai and Kejnau, in that order Joientra was the first place for which the petitioner had indicated his choice. But his application was entered at inward No.2208 with the Panchayat Samiti on 28.12.2001 but the application was not forwarded to the Gram Panchayat which is by his case for appointment in the first meeting of the Gram Sabha could not be considered.

Although the respondents have taken a stand that Shri K.D. Charan was a candidate from O.B.C. and therefore he

could not be appointed for approval reserved for general category. It is however trite law that there is no reservation for general category, although the posts may be reserved for categories like SC, ST and OBC.

This Court in Smt. Kavita Choudhary vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.5510/2003) while dealing with similar arguments held as under:-

> "Critical analysis of the law referred so discussed would show the underlying philosophy of reservation made in favour of SC, ST and OBC with reference to Article 15 (4) and 16(4) of the Constitution of India. These provisions confer certain benefits on the persons belonging to these categories which are not in substitution of any other right, which may be otherwise available to them as citizens of country. Benefit of reservation does not substitute or supplant any other right of a person belonging to SC, ST and OBC. Such benefit would be in addition to an already existing right including the fundamental right of equality. If any scheme of reservation or the procedure evolved with a view to giving effect to such scheme, is made to depend upon the condition of truncating the fundamental or any other right of an individual, such scheme of reservation would be contrary to the constitutional provisions and the law, to the extent it curtails fundamental right or any other right of a person belonging to such

> category would be liable to be declared illegal. Reserving certain posts for different groups of the community in the first instance means that these posts are meant for members belonging to such specified group. This is an additional benefit conferred on them. On account of such additional benefit however they are not precluded from claiming ordinary benefits otherwise available to them. Members belonging to SC, ST and OBC for whom reservation of posts is made are not reserved for these posts although its converse is true. They cannot be asked to occupy only reserved posts. They would be free to occupy any posts including unserved posts. However, the requirement of law is that while claiming appointment against unserved posts, they should prove their merit like any other citizen, who is not entitled to the benefit of reservation. No provision of law whether substantive or procedural, can be so interpreted as to run country to this basic tenet of the Constitution of India."

In view of the above position of law, this arguments of the respondents cannot be accepted.

When Hari Prasad had applied for Gram Panchayat, Joientra, he submitted application to the office of Panchayat Samiti, Osiyan which fact has been admitted by the respondents themselves, he could not have been denied right to consideration just because the application submitted by him

was common for four places. It may be noted that it was the fault of the respondents themselves when they issued notification. They did not intimate as to if application for each of the places was required to be submitted separately. The fact remains that Hari Prasad when he submitted the application, had given first preference for Joientra and at the time of selection on 26th January, 2002 his application was not received by Gram Panchayat. Subsequently when he approached to the higher authorities, under their direction a fresh selection took place in which not only Hari Prasad was considered but K.D.Charan was also considered. Proceedings of the subsequent selection are available on record which indicate that Hari Prasad had better record which indicate the merit of both the candidates. While the percentage of merit assets in the case of K.D. Charan was only 37.4 whereas for Hari Prasad it was 47.32 . Hari Prasad is having qualification of M.Com., B.Com. and B.Ed. and has also passed BSTC Certificate. As against this, the petitioner's qualification even as per his own assertion in the writ petition is just B.A. and B.Ed.

I do not therefore find any error in the action of the respondents in directing a fresh selection and giving opportunity to all eligible candidates including both Hari Prasad and K.D. Charan for consideration and selecting the one who is more meritorious.

In the result, the writ petition No.863/2002 filed by K.D. Charan is dismissed. The writ petition filed by Hari Prasad being No.1430/2003 is allowed and the respondents are directed to appoint him on the post of Para Teacher within one month. His appointment however shall take effect from the date he joins in service. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chahar/-